

MORRIS PETERSON  
 Steve Morris, Bar No. 1543  
 Rex D. Garner, Bar No. 9401  
 900 Bank of America Plaza  
 300 South Fourth Street  
 Las Vegas, NV 89101  
 Telephone: (702) 474 9400  
 Facsimile: (702) 474-9422

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

|                                |   |                           |
|--------------------------------|---|---------------------------|
| FASTENERS FOR RETAIL, INC.,    | ) | CASE NO:                  |
|                                | ) |                           |
| Plaintiff,                     | ) |                           |
|                                | ) |                           |
| v.                             | ) |                           |
|                                | ) | <b>VERIFIED COMPLAINT</b> |
| NINGBO LIUHE PLASTICS CO. LTD. | ) |                           |
| and NINGBO ZHENHAI LIUHE       | ) |                           |
| PLASTICS CO. LTD.,             | ) |                           |
|                                | ) |                           |
| Defendants.                    | ) |                           |

This lawsuit is brought by Fasteners for Retail, Inc. ("FFR") against Ningbo Liuhe Plastics Co. Ltd. and Ningbo Zhenhai Liuhe Plastics Co. Ltd. ("Ningbo") for Ningbo's intentional infringement of the intellectual property of FFR. Ningbo is a Chinese company. It plans on coming to Las Vegas to sell its products at the GlobalShop 2010 Tradeshow on March 10-12, 2010 and then leave. However, the products in Ningbo's catalog and that it intends to sell here are largely based on FFR's intellectual property. Ningbo's products infringe FFR patents, infringe a trademark registered by FFR, and are based on misappropriation of FFR's trade secrets obtained when Ningbo manufactured some of these same products for FFR. In addition, Ningbo's catalog contains photographs of products blatantly copied from FFR's own, copyrighted, catalog.

1 FFR seeks to enjoin Ningbo from selling the infringing products at the trade show  
2 and from distributing the catalog.

### 3 JURISDICTION AND VENUE

4 1. This Court has original jurisdiction over this matter pursuant to  
5 the patent laws of the United States, Title 35 of the United States Code, the  
6 Lanham Trademark Act of 1946, as amended, 15 U.S.C. § 1051, *et seq.*, the  
7 Copyright Act of 1976, 17 U.S.C. § 501 ("the Copyright Law"), 28 U.S.C. §§ 1331  
8 and 1338(a) and (b).

9 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and  
10 28 U.S.C. § 1400(b).

### 11 PARTIES

12 3. Plaintiff Fasteners for Retail, Inc. ("FFR") is a corporation  
13 organized and existing under the laws of the State of Ohio, with its principal place  
14 of business and residency in Twinsburg, Ohio. FFR is in the business of selling a  
15 variety of products used in retail environments, including sign holders,  
16 merchandising systems, literature holders, shelf-edge labeling systems, display  
17 hardware and components, ceiling display systems, banner hangers, and a variety  
18 of product merchandisers including merchandising strips and display hooks.

19 4. Defendant Ningbo Liuhe Plastics Co. Ltd. ("Ningbo Liuhe") is a  
20 Chinese company with its principal place of business and residency at Yanjiang  
21 Village, Zhenhai Jiaochuan Street, Ningbo, China.

22 5. Defendant Ningbo Zhenhai Liuhe Plastics Co. Ltd. ("Ningbo  
23 Zhenhai") is a Chinese company with its principal place of business and residency  
24 at Yanjiang Village, Zhenhai Jiaochuan Street, Ningbo, China.

25 6. On information and belief, Ningbo Zhenhai is either a DBA or a  
26 successor corporation to Ningbo Liuhe. (Ningbo Zhenhai and Ningbo Liuhe are  
27 collectively referred to herein as "Ningbo.")  
28

1           7. Ningbo does or intends to do business in the State of Nevada  
2 and in this judicial district. Ningbo has contracted to attend the GlobalShop 2010  
3 conference in Las Vegas, Nevada from March 10-12, 2010.

4                           **FACTUAL BACKGROUND**

5           8. In April 2004, FFR contracted with Ningbo for the manufacture  
6 of certain retail items developed by FFR. Those items included label holders,  
7 ceiling display systems, data strips and sign boards.

8           9. In order to allow Ningbo to manufacture FFR's products, FFR  
9 disclosed confidential information about the manufacture of those products. FFR  
10 developed those products at substantial expense, and has protected the  
11 confidentiality of that information from disclosure. To protect that information  
12 from further disclosure, FFR required Ningbo to agree in writing to keep FFR's  
13 information confidential.

14           10. FFR and Ningbo severed their business relationship in June  
15 2007. Ningbo agreed to return all of FFR's confidential information.

16           11. Ningbo has recently released a new catalog. That catalog  
17 shows that most of Ningbo's current product lines are based upon, and infringe,  
18 FFR's intellectual property.

19           12. Ningbo is now promoting these lines of products. As further  
20 described below, Ningbo's "label holder" are based on Ningbo's misappropriation  
21 and use of FFR's trade secrets, infringe FFR's patents, and are marketed using  
22 photos from FFR's own catalog that are subject to copyright protection.

23           13. Ningbo's "ceiling display systems" infringe four published FFR  
24 patents.

25           14. Ningbo's "data strip" line of products are also based on FFR  
26 trade secrets or infringe FFR patents. In addition, all of Ningbo's "data strip"  
27 products violate FFR's trademark rights – as FFR registered the term "Data Strip"  
28 with the United States Patent and Trademark Office in 1995.

1           15. Ningbo is registered to exhibit its products at the GlobalShop  
2 2010 conference in Las Vegas, Nevada on March 10 through March 12, 2010. On  
3 the website maintained for conference attendees, Ningbo lists its business as  
4 "specializing in the manufacturing of plastic extrusions for supermarket and other  
5 retail areas." Ningbo further states that its "main products are: Price label holder,  
6 sign holder for shelf, and Sign board."

7           16. Ningbo intends to market its infringing products to retailers  
8 and other customers at the GlobalShop 2010 conference.

9           17. FFR is also registered to exhibit its products at the GlobalShop  
10 conference in Las Vegas.

11           18. Because Ningbo has misappropriated FFR's trade secrets and  
12 copied its products, Ningbo and FFR's products are nearly identical. The products  
13 are marketed and used in identical markets and by the same types of customers.

14           19. Because the products marketed by FFR and Ningbo are  
15 inexpensive, consumers are not likely to exercise a great degree of care in  
16 determining whether the products are from the same source, so the risk of  
17 confusion is great.

18           **A. Ningbo's Products Infringe Six FFR Patents.**

19           20. FFR is the owner, by assignment, of U.S. Design Patent  
20 D454,918 (the "918 Patent"), entitled "Upright Sign Holder." The 918 Patent was  
21 duly and legally issued by the United States Patent and Trademark Office on  
22 March 26, 2002 upon an application filed in the name of Stephen D. Wamsley and  
23 Paul A. Mueller. The 918 Patent is a design patent for the ornamental design of an  
24 upright sign holder. A true copy of the text and drawing of the 918 Patent is  
25 attached hereto as Exhibit A.

26           21. Since at least 2001, FFR has marketed and sold sign holders  
27 reflecting the ornamental design embodied in the 918 Patent. FFR has sold and  
28

continues to sell these sign holders. A depiction of an FFR product from an FFR catalog reflecting FFR's use of the 918 Patent is included below.

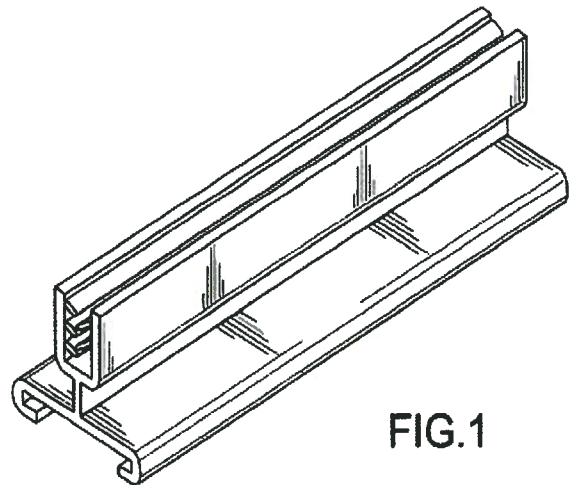
22. FFR expended substantial time, effort and money in conceiving, developing, advertising, promoting and marketing the upright sign holder reflected in the 918 Patent, including its distinct base. FFR's efforts have been successful, and FFR has sold a substantial number of sign holders utilizing the design reflected in the 918 Patent.

23. Ningbo markets a product called a "Price label holder" – designated as product number LHR004 in Ningbo's current catalog. That product is virtually identical to the FFR product that utilizes the design reflected in the 918 Patent. A photograph taken from the Ningbo catalog showing its product number LHR004 is included below on the left, together with a drawing from the 918 Patent on the right.



Product name: Price label holder

Product number: LHR004



24. FFR is also the owner, by assignment, of U.S. Patent 6,698,124 (the "124 Patent"), entitled "Sign Holder With Hinge." The 124 Patent was duly and legally issued by the United States Patent and Trademark Office on March 2, 2004 upon an application filed in the name of Daniel J. Kump, Paul A. Mueller and Stephen D. Wamsley.



1           25. Ningbo's LHR004 product also infringes one or more claims  
2 stated in the 124 Patent.

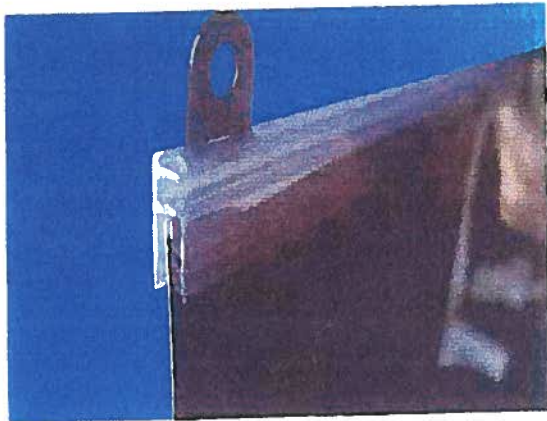
3           26. FFR is the owner, by assignment, of U.S. Design Patent D423,  
4 592 (the "592 Patent"), entitled "Banner Hanger." The 592 Patent was duly and  
5 legally issued by the United States Patent and Trademark Office on April 25, 2000  
6 upon an application filed in the name of Stephen D. Wamsley. The 592 Patent is a  
7 design patent for the ornamental design of a banner hanger. A true copy of the  
8 text and drawing of the 592 Patent is attached hereto as Exhibit B.

9           27. FFR is the owner, by assignment, of U.S. Design Patent D397,  
10 366 (the "366 Patent"), entitled "Banner Hanger." The 366 Patent was duly and  
11 legally issued by the United States Patent and Trademark Office on August 25,  
12 1998 upon an application filed in the name of Stephen D. Wamsley. The 366  
13 Patent is a design patent for the ornamental design of a banner hanger. A true  
14 copy of the text and drawing of the 366 Patent is attached hereto as Exhibit C.

15           28. Since at least 1997, FFR has marketed and sold sign holders  
16 reflecting the ornamental designs embodied in the 592 and 366 Patents. FFR has  
17 sold and continues to sell these banner hangers.

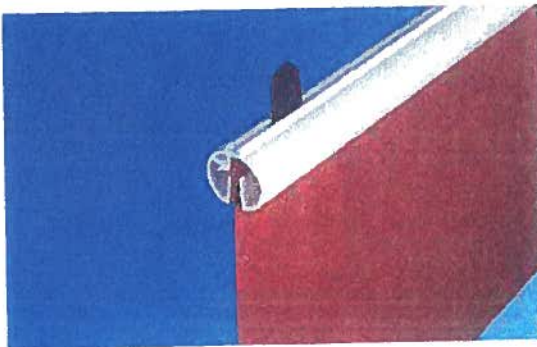
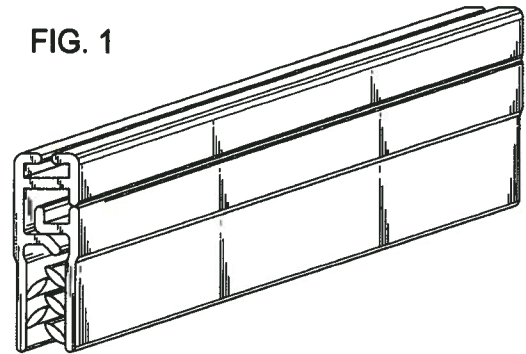
18           29. FFR expended substantial time, effort and money in conceiving,  
19 developing, advertising, promoting and marketing the banner hangers reflected in  
20 the 592 and 366 Patents. FFR's efforts have been successful, and FFR has sold a  
21 substantial number of banner hangers utilizing the designs reflected in the 592  
22 and 366 patents.

23           30. Ningbo markets products called "Ceiling display systems" –  
24 designated as product number LHX001 in Ningbo's current catalog. Those  
25 products are virtually identical to the FFR products that utilize the design  
26 reflected in the 592 and 366 patents. Photographs taken from the Ningbo catalog  
27 showing its product number LHX001 are included below on the left, together with  
28 drawings from the 592 and 366 Patents on the right.



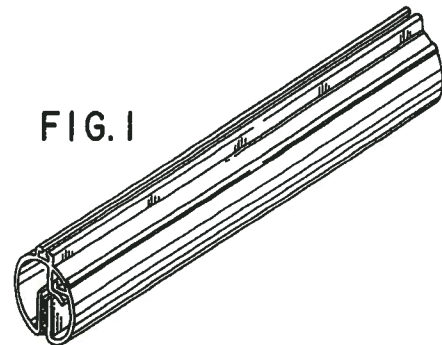
U.S. Patent Apr. 25, 2000 Sheet 1 of 3 Des. 423,592

FIG. 1



U.S. Patent Aug. 25, 1998 Sheet 1 of 2 Des. 397,366

FIG. 1

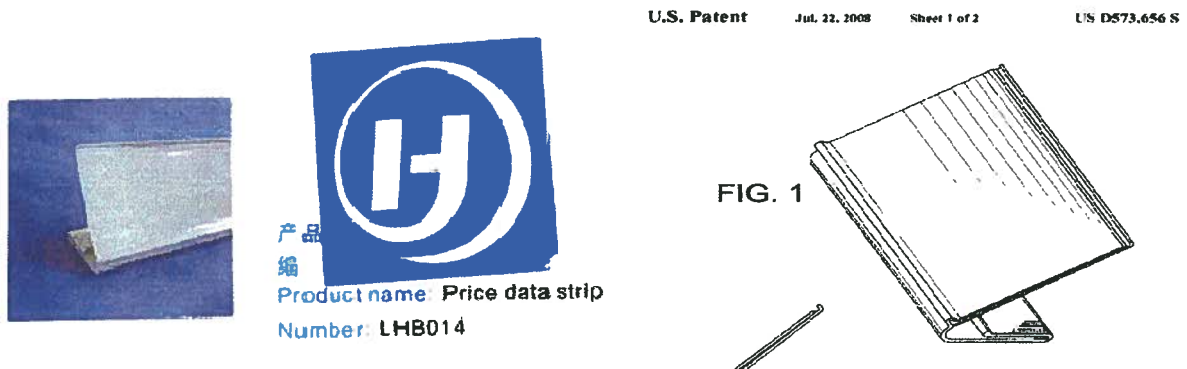


产品名称 价格悬挂条  
编号 LHX001

31. FFR is the owner, by assignment, of U.S. Design Patent D573,656 (the "656 Patent"), entitled "Clipon Label Holder." The 656 Patent was duly and legally issued by the United States Patent and Trademark Office on July 22, 2008 upon an application filed in the name of Stephen D. Wamsley. The 656 Patent is a design patent for the ornamental design of a clipon label holder. A true copy of the text and drawing of the 656 Patent is attached hereto as Exhibit D.

32. FFR expended substantial time, effort and money in conceiving, developing, advertising, promoting and marketing the banner hangers reflected in the 656 Patent.

33. Ningbo markets products called "Price data strips" – designated as product number LHB014 in Ningbo's current catalog. That product is virtually identical to the FFR design reflected in the 656 patents. A photograph taken from the Ningbo catalog showing its product number LHB014 is included below on the left, together with a drawing from 656 Patent on the right.

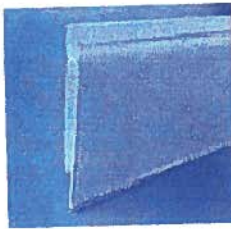


34. FFR is also the owner, by assignment, of U.S. Patent 6,026,603 (the "603 Patent"), entitled "Label Holder with Rearward Extending Dust Flange." The 603 Patent was duly and legally issued by the United States Patent and Trademark Office on February 22, 2000 upon an application filed in the name of Daniel J. Kump and Paul A. Mueller. A true copy of the text and drawing of the 603 Patent is attached hereto as Exhibit E.

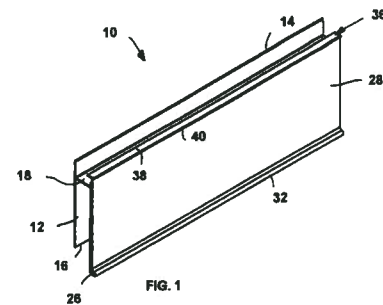
35. FFR expended substantial time, effort and money in conceiving, developing, advertising, promoting and marketing the banner hangers reflected in the 603 Patent. FFR's efforts have been successful, and FFR has sold a substantial number of label holders utilizing the design reflected in the 603 Patent.

36. Ningbo markets products called "Price data strips" – designated as product number LHB011 in Ningbo's current catalog. That product is virtually identical to the FFR products that utilize the 603 Patent. A photograph taken from the Ningbo catalog showing its product number LHB011 are included below on the left, together with a drawings from the 603 Patent on the right.





产品名称 价格标条  
 编号 LHB011  
 Product name Price data strip  
 Number LHB011



37. Ningbo's LHB011 product infringes one or more claims of the 603 Patent.

**B. Ningbo's Products and Catalog Infringe FFR's Registered Trademark "Data Strip."**

38. FFR is the owner of the registered trademark for the term "Data Strip" (the Mark") for sign holders through registration number 1,911,437, granted August 15, 1995. A copy of FFR's registration is attached as Exhibit F.

39. FFR has used the "Data Strip" Mark in commerce since 1994 and continues the Mark to market FFR products.

40. Ningbo markets a line of products that infringe FFR's trademark rights. Twenty-eight Ningbo products, numbers LHR001 through LHR028, are all named "Data Strip" in Ningbo marketing materials, including Ningbo's catalog. A true and correct copy of Ningbo's catalog is attached as Exhibit G.

**C. Ningbo's Catalog Infringes FFR's Copyrights.**

41. Ningbo markets its product numbers LHR004, LHB011, LHB012 and LHG001 using photographs blatantly copied from the FFR catalog.

42. FFR has made, and continues to make, a substantial investment of time, effort and expense in the design, development, testing, manufacturing, and marketing of its products using catalogs, including the development and use of photographs in its catalogs. In the depiction below, the photograph on the left is taken from the Ningbo catalog, and the photograph on the right is from an FFR

catalog. The photographs are identical except that Ningbo's catalog crops the right side of the photos.



产品名称: 价格标签夹  
编号: LHR004

Pro  
Nur





43. The FFR catalogs contain wholly original materials constituting copyrightable subject matter under the Copyright Law. The photographs depicted in the FFR catalog were taken by FFR personnel, and are owned by FFR.

44. Prior to filing suit, FFR filed copyright registration applications for each of the four photographs that Ningbo copied from FFR's catalog. True and correct copies of receipts confirming FFR's registration applications are attached as Group Exhibit H hereto.

45. Ningbo's product numbers LHR004, LHB011, LHB012 and LHG001 and FFR's products shown in the photographs above are sold to the same retail customers. For example, Ningbo has attempted to sell its products to Wal-Mart, an existing FFR customer.

46. Ningbo is now attempting to sell its products at the GlobalShop 2010 conference to a number of retail customers, who are likely to be confused by the virtually identical products sold by FFR and Ningbo.

#### **D. Ningbo Has Misappropriated FFR's Trade Secrets.**

47. Two lines of Ningbo's products – constituting more than 17 separate products – were manufactured through Ningbo's misappropriation of FFR's technology. Those products also reflect Ningbo's misappropriation of FFR trade secrets.

48. In order to allow Ningbo to manufacture products for sale by FFR, FFR disclosed secret and valuable information regarding its products. That



1 information includes specific requirements for the types of materials to be used in  
2 the manufacture of such products, the density and flexibility of such materials,  
3 and the manufacturing process to be employed in the manufacture of those  
4 products.

5 49. If Ningbo did not have access to FFR's trade secrets, Ningbo  
6 could not have produced the following products: LHR001, LHR002, LHR 003,  
7 LHR 005, LHR 006, LHR 008, LHR 009, LHG 001, LHG 003, LHG 004, LHB 001,  
8 LHB 002, LHB 007, LHB 008, LHB 009, LHB 010, and LHB 011.

9 50. To the layman's eye, FFR's products may not appear overtly  
10 complicated. But in fact, crafting the high-quality products that FFR is known for  
11 is a painstaking and expensive process.

12 51. Every individual product must be fine-tuned to establish  
13 optimal configurations given the product's intended use, and must take into  
14 account weight tolerances, density, flexibility, and chemical make-up, among  
15 other things. FFR has invested and continues to invest substantial human and  
16 economic capital in this research and development process. Even the smallest and  
17 seemingly simple label holder may take years to develop.

18 52. It would be extremely difficult or impossible for a competitor to  
19 reverse-engineer all of this confidential information about a particular product  
20 simply by inspecting or testing the product itself. For this same reason, this  
21 confidential information has significant commercial value.

22 53. The confidential development information on FFR's products is  
23 a closely-guarded secret, even within FFR. For example, and without limitation,  
24 FFR engineers with access to this confidential information are required to sign  
25 confidentiality agreements with FFR. The confidential information is also secured  
26 with a computer-protected password. And, the confidential information is never  
27 provided to FFR customers.

28

54. Beginning in 2004, FFR began utilizing Ningbo as FFR's manufacturer and supplier for certain FFR products, including FFR's label holders, banner hangers, and data strip products.

55. In the course of and specifically in connection with that relationship, FFR provided Ningbo with FFR's confidential product information, so that Ningbo could create the FFR products at FFR's direction. Simply put, FFR provided Ningbo with this information because Ningbo needed the information to perform the services FFR requested.

56. In particular, FFR provided Ningbo with drawings, schematics, and information on density, flexibility, and the chemical make-up of the products. This and other confidential information showed Ningbo how to manufacture the products FFR requested.

57. Ningbo was required to and did sign an agreement acknowledging the confidentiality of the information, and agreeing not to use or disclose the information for any purpose other than the performance of Ningbo's duties as a FFR manufacturer.

58. As shown by the chart attached to this Complaint as Exhibit I, 17 Ningbo products that utilize misappropriated FFR trade secrets are identical to products sold by FFR. Ningbo's production and marketing of the products listed in the chart demonstrates Ningbo's misappropriation and use of FFR trade secrets.

#### **COUNT I - PATENT INFRINGEMENT (DESIGN PATENTS)**

59. FFR repeats the allegations of paragraphs 1 through 58 of this Complaint as though alleged herein.

60. Via assignment, FFR is the true and proper owner of the 918, 592, 366 and 656 Patents.

61. The 918, 592, 366 and 656 Patents are presumed to be valid pursuant to 35 U.S.C. § 282. The 918, 592, 366 and 656 Patents are, in fact, valid. The upright sign holder, banner hangers and label holders sold by FFR



1 embodying the design in the 918, 592, 366 and 656 Patents have been commercially  
2 successful.

3           62. FFR has marked its products embodying the claims of the 918,  
4 592, 366 and 656 Patents in accordance with 35 U.S.C. § 287, or Ningbo has  
5 received actual notice of FFR's patent rights under those patents.

6           63. Ningbo has infringed, and continues to infringe, the 918, 592,  
7 366 and 656 Patents, in violation of 35 U.S.C. § 271, through the marketing and  
8 selling of products containing the handle with the ornamental designs embodied  
9 in those patents.

10           64. Specifically, Ningbo's LHR004, LHX001 and LHB014 products  
11 appropriate the features as well as the overall appearance of the FFR products  
12 described in the 918, 592, 366 and 656 Patents, and are copies of FFR products.

13           65. Accordingly, Ningbo has infringed, and continues to infringe,  
14 the 918, 592, 366 and 656 Patents are through its manufacture, importation,  
15 marketing and sale of products containing ornamental designs nearly identical to  
16 the FFR ornamental design disclosed in those Patents.

17           66. Ningbo is selling its LHR004, LHX001 and LHB014 products  
18 through its Web site and through catalogs, and intends to market those products  
19 at the GlobalShop 2010 Conference in Las Vegas, Nevada, and sell those products  
20 to customers nationwide.

21           67. Ningbo's infringement of the 918, 592, 366 and 656 Patents is  
22 willful, deliberate and intentional, as evidenced by the facts that the ornamental  
23 design of the Ningbo LHR004, LHX001 and LHB014 products are virtual copies of  
24 FFR ornamental designs.

25           68. FFR has been irreparably damaged by the infringing acts of  
26 Ningbo, and will continue to be irreparably damaged, unless Ningbo is enjoined  
27 from further acts of infringement.

28

WHEREFORE, FFR asks that the Court:

- A. adjudge and decree that the 918, 592, 366 and 656 Patents are valid and enforceable, and have been infringed by Ningbo;
- B. enter a preliminary and permanent injunction, pursuant to 35 U.S.C. § 283, enjoining Ningbo from manufacturing, advertising or selling Ningbo's LHR004, LHX001 and LHB014 products, or any other product containing the FFR ornamental designs used in the 918, 592, 366 and 656 Patents;
- C. order that Ningbo deliver for destruction all articles of merchandise, including molds, in its possession or control, or in the possession or control of its agents, which infringe on the 918, 592, 366 and 656 Patents;
- D. order an accounting to assess the damages to FFR arising from Ningbo's willful patent infringement, and that those damages be trebled and awarded to FFR with interest pursuant to 35 U.S.C. §§ 284;
- E. find that this is an exceptional case pursuant to 35 U.S.C. § 285, and accordingly award FFR its reasonable attorneys' fees;
- F. order an award of damages pursuant to 35 U.S.C. § 289;
- G. award such other and further relief as this Court may deem just and proper.

## **COUNT II - PATENT INFRINGEMENT (UTILITY PATENTS)**

69. FFR repeats the allegations of paragraphs 1 through 58 of this Complaint as though alleged herein.

70. Via assignment, FFR is the true and proper owner of the 124 and 603 Patents.

71. The 124 and 603 Patents are presumed to be valid pursuant to 35 U.S.C. § 282. The 124 and 603 Patents are, in fact, valid.

72. FFR has marked its products embodying the claims of the 124 and 603 Patents in accordance with 35 U.S.C. § 287, or Ningbo has received actual notice of FFR's patent rights under those patents.

73. Ningbo has infringed, directly and/or through acts of contributory infringement or inducement, and continues to infringe, one or more

1 claims of the 124 and 603 Patents, in violation of 35 U.S.C. § 271, by making, using,  
 2 selling, offering for sale, and/or importing into the United States products,  
 3 including Ningbo's LHR004 and LHB011 products, covered by one or more claims  
 4 of the 124 or 603 Patents. Ningbo is selling its LHR004 and LHB011 products  
 5 through its Web site and through catalogs, and intends to market those products  
 6 in this District at the GlobalShop 2010 Conference in Las Vegas, Nevada, and sell  
 7 those products to customers nationwide.

8           74. FFR has been irreparably damaged by Ningbo's infringing acts  
 9 and will continue to be irreparably damaged unless Ningbo is enjoined from  
 10 further acts of infringement.

11           75. FFR is entitled to recover damages adequate to compensate it  
 12 for Ningbo's acts of infringement.

13           76. On information and belief, Ningbo's infringement has been  
 14 intentional and willful. This is also an exceptional case within the meaning of 35  
 15 U.S.C. § 285.

16           WHEREFORE, FFR asks that the Court:

- 17           A. adjudge and decree that the 124 and 603 Patents are valid and  
 18 enforceable, and have been infringed by Ningbo;
- 19           B. enter a preliminary and permanent injunction, pursuant to 35  
 20 U.S.C. § 283, enjoining Ningbo from manufacturing,  
 21 advertising or selling Ningbo's LHR004 and LHB011 products,  
 22 or any other product covered by one or more claims of the 124  
 23 or 603 Patents;
- 24           C. order that Ningbo deliver for destruction all articles of  
 25 merchandise, including molds, in its possession or control, or in  
 26 the possession or control of its agents, which infringe on the 124  
 27 and 603 Patents;
- 28           D. order an accounting to assess the damages to FFR arising from  
 Ningbo's willful patent infringement, and that those damages  
 be trebled and awarded to FFR with interest pursuant to 35  
 U.S.C. §§ 284;
- E. find that this is an exceptional case pursuant to 35 U.S.C. § 285,  
 and accordingly award FFR its reasonable attorneys' fees;

F. award such other and further relief as this Court may deem just and proper.

**COUNT III - TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)**

77. FFR repeats the allegations of paragraphs 1 through 58 of this Complaint as though alleged herein.

78. Ningbo has infringed FFR's rights in the Data Strip by using the Data Strip in connection with the sale, offering for sale, distribution, or advertising of goods.

79. Such use of the Data Strip by Ningbo is likely to cause confusion, or to cause mistake, or to deceive, in violation of 15 U.S.C. § 1114.

80. Ningbo's infringement has been willful and deliberate. This is an exceptional case.

81. FFR has been irreparably damaged by Ningbo's infringing acts and will continue to be irreparably damaged unless defendants are enjoined from further acts of infringement.

WHEREFORE, FFR asks that the Court:

- A. grant an injunction pursuant to the powers granted it under 15 USC § 1116, enjoining Ningbo and its sub-licensees, agents, servants, and employees from directly or indirectly using the mark "Data Strip" or any mark, word or name similar to "Data Strip" which is likely to cause confusion or mistake;
- B. that the Court, pursuant to the powers granted it under 15 USC § 1118, order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in Ningbo's possession bearing the mark "Data Strip" and all plates, molds and other means of making the same be delivered and destroyed;
- C. that Ningbo be required to account to FFR for any and all profits derived by Ningbo from the sale of products using the mark "Data Strip" and for all damages sustained by FFR by reason of the acts of infringement complained of;
- D. that the Court award FFR treble the amount of actual damages suffered by them, pursuant to 15 USC § 1117;
- E. for the costs of suit and attorneys' fees FFR incurs in this action; and

F. for such other and further relief as the Court deems appropriate.

**COUNT IV - VIOLATION OF NEVADA TRADE SECRETS ACT**

82. FFR repeats the allegations of paragraphs 1 through 58 of this Complaint as though alleged herein.

83. The product specifications, components, and manufacturing processes conveyed by FFR to Ningbo are trade secrets as defined in by the Nevada Trade Secrets Act, in that they are sufficiently secret to derive economic value from not being generally known to others who can get economic value from their disclosure or use and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy. NRS 600A.030(4)(a). The trade secrets have been developed by FFR at great expense and over a long period of time. The trade secrets are a valuable part of FFR's business and are not known or available to competitors or the public.

84. Ningbo acquired the FFR trade secrets while it was obligated by contract with FFR to maintain the confidentiality and secrecy. Ningbo misappropriated FFR's trade secrets by disclosing the information and using the information to manufacture and sell products without FFR's consent, either implied or express, while it knew or should have known that such disclosure and use was in breach of its obligation to keep the information secret.

85. Ningbo's misappropriation was willful and malicious, and was done with full knowledge of the confidential and proprietary nature of the information.

86. Pursuant to the Nevada Trade Secrets Act, FFR is entitled to actual losses caused by the defendants' misappropriation and the amount of the Ningbo's unjust enrichment in addition thereto. NRS 600A.050. Alternatively, FFR is entitled to a reasonable royalty for Ningbo's misappropriation. *Id.*



1           87. Because Ningbo's actions were willful and malicious, FFR is  
2 entitled to exemplary damages pursuant to the Nevada Trade Secrets Act in an  
3 amount up to twice the actual damages and unjust enrichment. NRS 600A.050.

4           88. Because Ningbo's actions were willful and malicious, FFR is  
5 entitled to recover its attorneys' fees pursuant to the Nevada Trade Secrets Act.  
6 NRS 600A.060.

7           89. Absent injunctive relief, FFR will be irreparably injured by the  
8 use of its confidential information by a competitor and by the disclosure of such  
9 information to the general public. Despite the damages provisions of the Nevada  
10 Trade Secrets Act, FFR has no adequate remedy at law because its actual damages  
11 will be difficult to calculate.

12           WHEREFORE, FFR asks that the Court enter an Order in its favor,  
13 and against Ningbo:

- 14           A. enjoining Ningbo from disclosing or using any of the  
15 confidential information and trade secrets obtained from FFR in  
16 the manufacture or marketing any products, and ordering  
17 Ningbo to return all such confidential information and trade  
18 secrets to FFR;
- 19           B. for such damages as provided by the Nevada Trade Secrets  
20 Act, NRS 600A.050, including the actual loss to FFR and the  
21 unjust enrichment to Ningbo for the unauthorized use and  
22 disclosure of FFR's trade secrets; or, alternatively, for a  
23 reasonable royalty as provided in that section;
- 24           C. for FFR's attorneys' fees as provided for in the Nevada Trade  
25 Secrets Act, NRS 600A.060;
- 26           D. for exemplary damages as provided for in the Nevada Trade  
27 Secrets Act, NRS 600A.050; and
- 28           E. ordering such other and further relief as this Court deems just  
and proper.

**COUNT V – COPYRIGHT INFRINGEMENT**

90. FFR repeats the allegations of paragraphs 1 through 58 of this Complaint as though alleged herein.

91. Ningbo's publication of FFR's photographs without FFR's authorization or consent infringes FFR's copyright in the photographs associated with the following products (identified by FFR product ID numbers) in violation of the Copyright Act, 17 U.S.C. § 501, *et seq.*: 1815260001, 1815260002, 1514844301, 1516034301, 4407547001, 4401637900, 4401637901, 4401947401, 4401947402.

92. Ningbo's conduct constitutes the willful infringement of FFR's copyrights in its photographs.


93. By reason of the foregoing facts, FFR is entitled to injunctive and monetary relief against Ningbo pursuant to 17 U.S.C. §§ 502 through 504.

WHEREFORE, Plaintiff FFR asks that this Court grant the following relief against Defendant Ningbo:

- A. that Ningbo, its agents, employees, successors, assigns, and all other persons acting in concert with or affiliated with it, be preliminarily and permanently enjoined and restrained from copying, reproducing, duplicating, disseminating, distributing, maintaining, uploading, or otherwise using any unauthorized diagram, depiction or graphic of FFR's products and component parts which are the subject of this Complaint, and from otherwise infringing FFR's copyrights in said diagrams and graphic depictions;
- B. that Ningbo be ordered to file, within 30 days of the issuance of the injunction and/or order of impoundment, a sworn report setting forth in detail the manner in which it has complied with the injunction and order of impoundment;
- C. that Ningbo be ordered to provide an accounting of all profits derived from copying, using, or marketing unauthorized diagrams and graphic depictions of the FFR products which are the subject of this Complaint;

- 1 D. that FFR be awarded its actual damages for willful  
2 infringement; and  
3 E. any further relief the Court deems just and proper.  
4

5 MORRIS PETERSON

6 By   
7 Steve Morris, Bar No. 1543  
8 Rex D. Garner, Bar No. 9401  
9 900 Bank of America Plaza  
10 300 South Fourth Street  
11 Las Vegas, NV 89101

12 Of counsel  
13 Steven A. Weiss  
14 William B. Berndt  
15 Joseph J. Siprut  
16 SCHOPF & WEISS LLP  
17 One South Wacker Drive, 28<sup>th</sup> Fl.  
18 Chicago, IL 60606

19 Attorneys for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

Under penalty of perjury as provided by the laws of the United States, the undersigned certifies that he has read the foregoing **Verified Complaint**, that he has personal knowledge of the matters set forth therein, and that the statements set forth therein are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he believes the same to be true.

  
\_\_\_\_\_  
Paul A. Mueller